COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1351 **Cir. Ct. No. 2013ME721**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF MARTIN W.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

MARTIN W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County: JOHN A. JORGENSEN, Judge. *Affirmed*.

¶1 REILLY, J.[1] Martin W. appeals the order committing him for involuntary treatment pursuant to WIS. STAT. § 51.20(1)(ar). He argues that the order was improper as the evidence at his commitment hearing did not show that less restrictive alternatives to medication had been attempted or explained to him. We affirm.

¶2 Martin is a prison inmate diagnosed with bipolar disorder. A petition was filed seeking Martin's commitment for involuntary medication. The petition alleged that Martin had a mental illness in need of treatment and that voluntary treatment with psychotropic medications had been attempted and had been unsuccessful. At the hearing on the petition, Martin's psychiatrist testified that medication was necessary to treat Martin's disorder and that Martin had refused to voluntarily take a number of the psychotropic medications at their therapeutic doses. His psychiatrist also testified that he attempted to counsel Martin about his different treatment needs, "but it doesn't get anywhere…. [He] keeps talking nonstop, so I really have no opportunity to do anything."

¶3 Martin testified at the hearing that the drugs that had been prescribed for him either hurt his stomach or, according to his library research, were not appropriate for bipolar disorder. He testified that he would be willing to voluntarily take drugs if they did not have the negative side effects that he had previously experienced. In issuing its decision, the court acknowledged the disputed testimony over whether Martin was willing to voluntarily take his medication, finding most relevant to its decision that Martin had failed to take his

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

prescribed medication at therapeutic doses within the last month, despite his promise to do so at his probable cause hearing. Accordingly, the court ordered Martin to be committed subject to involuntary medication or treatment. Martin appeals.

¶4 Martin's appeal challenges whether the County met its burden to prove with clear and convincing evidence that (1) appropriate less restrictive forms of treatment have been attempted unsuccessfully and (2) Martin was fully informed about his treatment needs. *See* WIS. STAT. § 51.20(1)(ar). Whether the County has met its burden is a mixed question of law and fact. ***Outagamie Cnty. v. Melanie L.***, 2013 WI 67, ¶¶37-39, 349 Wis. 2d 148, 833 N.W.2d 607. We will not disturb the circuit court's findings of fact unless clearly erroneous, but whether the County ultimately met its burden of proof requires us to independently apply facts to the statutory standard. ***Id.*** Applying the facts presented at Martin's hearing to § 51.20(1)(ar), we conclude that Martin's arguments fail.[2]

¶5 Martin first argues that the involuntary treatment order was improper as the County did not present evidence that it had tried any treatment other than medication for his bipolar disorder. WISCONSIN STAT. § 51.20(1)(ar) requires that "appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful." Section 51.20(1)(ar) does not require that alternatives to a particular medication or treatment be tried prior to commitment

[2] The circuit court did not make specific findings as to all of the requirements of WIS. STAT. § 51.20(1)(ar), most notably those raised in this appeal. We therefore review the evidence from the commitment hearing to see whether it sustains the result reached by the circuit court if it had made such findings. *See* ***State v. Mark A.***, 177 Wis. 2d 551, 559, 503 N.W.2d 275 (Ct. App. 1993).

for involuntary treatment. Nor does it require that the form of treatment tried prior to involuntary treatment be the least restrictive form of treatment available.

¶6 Here, the County presented testimony from Martin's treating psychiatrist that Martin had been given the chance to voluntarily take medication to treat his bipolar disorder and that this attempt had been unsuccessful as Martin failed to take his medication at therapeutic dosage levels. The County also presented evidence that medication was a necessary component of any treatment plan for Martin. This was sufficient to support a finding that appropriate less restrictive forms of treatment, i.e., voluntary medication, had been attempted with Martin and that this attempt had been unsuccessful.

¶7 Martin next argues that he was not "fully informed about his or her treatment needs" as required by WIS. STAT. § 51.20(1)(ar) as the testimony at his hearing established only that he was offered medication, even though he also had a need for counseling and substance abuse treatment. Again, we reject Martin's argument. There was testimony that Martin's treating psychiatrist had attempted to explain Martin's different treatment needs to him and offer counseling but that Martin would interrupt such explanations. There was evidence that Martin was informed of his treatment needs.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.